

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of)	
)	
Applications of Cellco Partnership)	WT Docket No. 12-175
D/B/A Verizon Wireless, and T-Mobile)	
License, LLC.)	

Reply to Joint Opposition of Public Knowledge

INTRODUCTION

The joint opposition¹ makes it clear that Verizon and T-Mobile want to have it both ways. In some respects, Verizon Wireless and T-Mobile (the Applicants) would like² the Commission to consider the spectrum transactions in this proceeding as a way to alleviate some of the concerns³ in the Commission's pending review of the transaction and agreements between Verizon, Comcast, Time Warner Cable, Bright House Networks, and Cox TMI Wireless (the Verizon/SpectrumCo transaction). However, the joint opposition also argues that this transaction should be evaluated on its own merits, without consideration of the Verizon/SpectrumCo transaction, so that the instant transaction can avoid conditions designed to protect the public interest.⁴ The Commission should not indulge the Applicants' attempts to portray these transactions as simultaneously both related and unrelated simply to serve the Applicants' interests.

¹ Joint Opposition of Cellco Partnership d/b/a Verizon Wireless and T-Mobile, WT Docket No. 12-175 (July 17, 2012) (hereinafter Joint Opposition).

² See Comments of Verizon Wireless, Cox TMI wireless, LLC, and SpectrumCo, LLC, WT Docket No. 12-4 (July 10, 2012).

³ See Petition to Deny of Public Knowledge *et al.*, WT Docket No. 12-4 (Feb. 21, 2012).

⁴ Joint Opposition at 2.

Notwithstanding the inextricable link between the proceedings before the Commission, this transaction independently supports the need for conditions if it is approved. Contrary to what the Applicants assert, the proposed conditions are related to the transaction in this proceeding.

I. DATA ROAMING CONDITIONS ARE RELATED TO THE TRANSACTION

If the Commission approves this transaction, the Applicants will strengthen their respective market positions,⁵ negatively affecting smaller, regional, and rural carriers' access to data roaming agreements. These carriers rely on data roaming agreements to achieve a nationwide network. Approval of this transaction will have a direct affect on the ability of other carriers to enter into roaming agreements, as the transaction will decrease or eliminate Applicants' interests in entering into what would otherwise be mutually beneficial agreements. This type of market harm permits, and certainly does not prohibit, the Commission to condition approval of this transaction on mandatory data roaming provisions.

Data roaming agreements between services serve an important role in the wireless market. The Commission has acknowledged that widespread availability of data roaming capability serves the public interest.⁶ In its competition report, the Commission found that roaming can be "particularly important for small and regional providers" who want to "remain competitive by meeting their customer's

⁵ Comments of Public Knowledge, WT Docket No. 12-175 (July 10, 2012) (hereinafter Public Knowledge Comments).

⁶ Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers, *Second Report and Order*, FCC 11-52 (Apr. 7, 2011).

expectations of nationwide service.”⁷ The Commission also has explained that roaming is critical to facilitate new entrants coming into the market.⁸

The Applicants currently maintain roaming agreements with their competitors in many cellular market areas.⁹ Because approval of this transaction will leave both Applicants with more expansive spectrum holdings, the Applicants will be less inclined to enter into new roaming agreements in the markets where their respective spectrum positions have improved. This decreased interest in entering into roaming agreements with regional carriers will be a measureable and direct consequence of this transaction, harming the public interest. With a less robust data roaming market, regional carriers will be faced with reduced access at higher costs as they attempt to provide nationwide coverage for their customers. As a result, fewer competitors will be able to enter the market and offer competitive rates, and consumers will have fewer choices for nationwide wireless service. It is the Commission’s directive to impose conditions to remedy harms that arise from a transaction.¹⁰ Because the marketplace will be harmed as a result of this transaction, the Commission should impose conditions requiring continued data roaming availability from the Applicants.

II. “USE IT OR SHARE IT” CONDITIONS ARE ALSO RELATED TO THE TRANSACTION

⁷ Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, *Fourteenth Report*, 25 FCC Rcd 11407, ¶125, (2010).

⁸ *Id.*

⁹ Verizon Wireless Ex Parte, WT Docket No. 05-265, (Nov. 5, 2010).

¹⁰ Embarq/CenturyTel Memorandum Opinion and Order, 24 FCC Rcd 8741, ¶ 12 (2009).

PK's request that this transaction be conditioned on the Commission requiring a "use it or share it" provision that would enforce an accelerated build-out schedule is also related to the transaction. If the transaction is approved, the Applicants will have a greater incentive to develop LTE services in urban markets that yield a high return on investment, while largely ignoring rural markets that don't have as high an ROI. This market phenomena exists today, but would be worsened if the Applicants can improve their services in high-value markets without committing to developing rural markets as well.¹¹

Applicants raise the concurrent proceeding¹² regarding a "use it or share it" regulation as a reason why the Commission should not include such a condition on this transaction. However, the Commission has previously demonstrated its willingness to include conditions on a transaction even while there were pending proceedings that implicated similar subject matter before the Commission.¹³ The Commission found that when there are "unique facts" and the transaction is of a "large scope,"¹⁴ it is permissible for the Commission to fulfill its statutory mandate to protect the public interest by requiring conditions.

Furthermore, the Commission has a strong history of including build-out requirements as a condition of merger and transaction approval. In 2007, the Commission conditioned approval of the AT&T and BellSouth merger on build-out

¹¹ See Public Knowledge Comments at 5.

¹² See *Promoting More Efficient Use of Spectrum Through Dynamic Spectrum Use Technologies*, Notice of Inquiry, 25 FCC Rcd 16632, ¶¶ 37-41 (2010).

¹³ See *Verizon Wireless-ALLTEL Memorandum Opinion and Order*, 23 FCC Rcd 17463, ¶¶ 192-197 (2008) (conditioning approval on Verizon Wireless's commitment to phase down its competitive ETC high cost support, even though the Applicants in that transaction asserted the conditions were "not merger-specific").

¹⁴ *Id.*

requirements in the 2.3 GHz band.¹⁵ Similarly, the Commission conditioned approval of the Sprint and Nextel merger in 2005 on the parties' commitment to adhere to build-out milestones in the 2.5 GHz band.¹⁶ These requirements demonstrate not only that the Commission has the authority to implement conditions in spectrum transactions, but also that it has been willing to prescribe such conditions. The transaction that the Applicants bring to the Commission now warrants conditions as well.

CONCLUSION

As detailed above, these conditions are substantively related to the transaction between Verizon Wireless and T-Mobile, even without consideration of the Verizon/SpectrumCo transaction. The Commission has the authority and should protect the public interest by ensuring that data roaming, build-out, and "use it or share it" requirements are conditions of the transfer.

Respectfully submitted,

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¹⁵ AT&T/BellSouth Memorandum Opinion and Order, 22 FCC Rcd 5662, Appendix F (2007).

¹⁶ Sprint/Nextel Memorandum Opinion and Order, 20 FCC Rcd 13967, ¶ 163 (2005).